

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JANICE HARDY

Claimant

V.

U.S.D. 500

Self-Insured Respondent

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Docket No. 1,049,419

ORDER

Self-insured respondent requested review of the October 26, 2015, Award by Administrative Law Judge (ALJ) Steven J. Howard. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

APPEARANCES

John G. O'Connor of Kansas City, Kansas, appeared for claimant. Frederick J. Greenbaum of Kansas City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board has considered the post-award record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found "claimant's altered gait following the occupational injury accelerated the disease process necessitating the joint replacement of the right leg."¹ The ALJ authorized Dr. Wingerter to perform the joint replacement.

Respondent argues claimant failed to prove her current need for treatment is a direct and natural consequence of her work-related accident rather than of an independent nonindustrial cause. Respondent maintains the ALJ's Order should be reversed.

Claimant contends the ALJ's Order should be affirmed.

The sole issue for the Board's review is: is claimant's need for knee replacement surgery a result of the August 15, 2008, work-related injury?

¹ ALJ P.A.M. Order (Oct. 26, 2015) at 4.

FINDINGS OF FACT

On August 15, 2008, claimant suffered an injury by accident while working as a custodian for respondent when she slipped and twisted her right knee while mopping. Claimant was diagnosed with a sprain and strain of the right knee and underwent treatment. Claimant suffered a second work-related injury to her right knee on January 29, 2010, when she fell while mopping a floor while working for respondent. Each of these injuries resulted in a docketed workers compensation claim against respondent.

As a result of the work-related injuries, claimant was treated or examined by Brent Koprivica, M.D., Peter Bieri, M.D., James Zarr, M.D., Dr. Robert Beatty, M.D., Temesgen Wakwaya, D.O., Pamele Fortner, ARNP, and S. R. Reddy Katta, M.D.

On February 21, 2011, the parties entered into a settlement of this claim based on a 20 percent permanent partial impairment to the right knee. The settlement included two companion cases, which the parties indicated are not relevant to this claim.² Drs. Bieri and Koprivica provided impairment ratings for the knee condition giving rise to this claim. Dr. Bieri assessed a 35 percent impairment to the right knee, of which 15 percent was preexisting. In his examination report of December 9, 2010, Dr. Bieri noted a grossly antalgic gait, favoring the right side. Dr. Koprivica assessed a 38 percent impairment to the right knee, of which 10 percent was preexisting.³ In his August 17, 2010 examination report, Dr. Koprivica noted a significant limp bilaterally with complaints of right knee pain.⁴

Prior to the settlement, Dr. Zarr also noted a mildly antalgic gait in his May 4, 2010, examination report. Following the settlement, claimant continued to have worsening symptoms in her right leg, including throbbing, stiffness, and pain. Claimant testified she had no problems with her right leg prior to August 15, 2008, but stated she missed work due, in part, to her right leg condition and was eventually terminated for absenteeism in 2014. Claimant testified she has no left knee symptoms. Claimant did not start using a cane until after the August 15, 2008, injury.

An Application for Post-Award Medical was filed with the Division on April 24, 2014, requesting a referral to Dr. Munns for evaluation regarding a total right knee arthroplasty per the recommendations of Dr. Koprivica. The ALJ authorized Dr. Wingerter to perform an independent medical evaluation.

Dr. Wingerter, a board certified orthopedic surgeon, examined claimant on April 25, 2015. Claimant complained of right knee pain. Dr. Wingerter reviewed claimant's history,

² *Hardy v. U.S.D. 500*, Nos. 1,049,420 & 1,049,421.

³ S.H. Trans. (Feb. 21, 2011), Koprivica Report at 14.

⁴ *Id.* at 11.

medical records, took x-rays and performed a physical examination. He noted claimant was 52 years old, had a valgus deformity of the right knee, walked with an antalgic gait and used a walker. Dr. Wingerter concluded claimant has severe osteoarthritis of the right knee. He wrote:

After obtaining the history and physical exam, it is evident that the patient has severe osteoarthritis of right knee. Knee replacement is the best surgical option for treatment at this time. I do believe that the condition is preexisting as there is report of evidence of degenerative changes without acute bony abnormalities following her fall. Her work injury may have contributed to an exacerbation of her pain, but I do not believe that the reported fall and associated contusion are the prevailing factor for her need for knee replacement. She did have evidence of degenerative changes already on radiographs at the time of her initial evaluation according to reports. She is also morbidly obese and has evidence of osteoarthritis in her left knee, but reports that her left knee is currently asymptomatic.⁵

Dr. Wingerter testified claimant's fall and resulting contusion/sprain could aggravate and accelerate the symptoms related to her preexisting arthritis, but he did not believe the arthritic condition itself was accelerated, aggravated, or exacerbated by the accident. Dr. Wingerter stated claimant's age and weight were contributing factors to a worsening of arthritis. He agreed it would be fair to say that walking with a limp contributed to the advancement of claimant's degenerative process, and it was reasonable to conclude that "walking on a painful knee will accelerate arthritis faster than it would have accelerated on its own."⁶

Claimant has not worked since leaving respondent. She has been on Social Security disability since April 2014.

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-510k(a) provides, in part:

At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the

⁵ Wingerter Depo., Ex. 2 at 2.

⁶ Wingerter Depo. at 27.

award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁷ Accordingly, the findings and conclusions set forth reflect the majority's decision and the signatures below attest that this decision is that of the majority.

ANALYSIS

In order to obtain post-award medical treatment, claimant must prove it is more probable than not the requested medical care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. Under the law existing at the time of claimant's injury by accident, an accidental injury is compensable even where the accident only serves to aggravate a preexisting condition.⁸ The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.⁹ The ALJ found claimant proved the requested treatment was related to the accidental injury. The Board agrees.

This claim was settled based upon a 20 percent impairment, based, in part, on the opinions of Drs. Koprivica and Bieri. In their examination reports, both Drs. Koprivica and Bieri noted claimant was experiencing an altered gait related to her right knee. While Dr. Zarr neither treated nor rated claimant's knee condition, he also notes a mildly antalgic gait in his May 4, 2010, examination report. It is evident that the knee condition contemplated in the settlement of this claim included an antalgic gait.

After her injury and after she settled this claim, claimant continued to limp as the result of her initial work-related injury. Claimant testified that she started using a cane after the August 15, 2008, injury. While Dr. Wingerter's opinions are equivocal on the relationship of claimant's injury and need for surgery, he testified that limping and walking on a painful knee will accelerate arthritis faster than it would on its own.

The evidence shows claimant suffered a limp as a result of her August 15, 2008, work-related injury, and the limp led to an acceleration of her underlying degenerative knee

⁷ K.S.A. 2014 Supp. 44-555c(j).

⁸ See *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

⁹ See *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997); citing *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 379, 573 P.2d 1036 (1978).

condition resulting in her current need for a right knee replacement. The acceleration of claimant's right knee condition related to the original compensable injury is compensable under *Woodward*.¹⁰

CONCLUSION

Claimant met the burden of proving her need for medical treatment is related to her August 15, 2008, injury by accident.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Steven J. Howard dated October 26, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of January, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Hon. Steven J. Howard, Administrative Law Judge

¹⁰ *Woodward, supra.*